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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/630,762	07/31/2003	David A. Sobel	1875.2330005	8453

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STERNE, KESSLER, GOLDSTEIN & FOX PLLC
1100 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

EXAMINER	
WHITMORE, STACY	
ART UNIT	PAPER NUMBER

2812

DATE MAILED: 05/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)								
	10/630,762	SOBEL, DAVID A.								
Period for Reply	Examiner	Art Unit								
	Stacy A Whitmore	2812								
<p>-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --</p>										
<p>A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION:</p> <ul style="list-style-type: none"> - Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication. - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely. - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication. - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). <p>Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).</p>										
<p>Status</p> <p>1)<input checked="" type="checkbox"/> Responsive to communication(s) filed on <u>31 July 2003</u>.</p> <p>2a)<input type="checkbox"/> This action is FINAL. 2b)<input checked="" type="checkbox"/> This action is non-final.</p> <p>3)<input type="checkbox"/> Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under <i>Ex parte Quayle</i>, 1935 C.D. 11, 453 O.G. 213.</p>										
<p>Disposition of Claims</p> <p>4)<input checked="" type="checkbox"/> Claim(s) <u>1-6</u> is/are pending in the application.</p> <p>4a) Of the above claim(s) _____ is/are withdrawn from consideration.</p> <p>5)<input type="checkbox"/> Claim(s) _____ is/are allowed.</p> <p>6)<input checked="" type="checkbox"/> Claim(s) <u>1-6</u> is/are rejected.</p> <p>7)<input type="checkbox"/> Claim(s) _____ is/are objected to.</p> <p>8)<input type="checkbox"/> Claim(s) _____ are subject to restriction and/or election requirement.</p>										
<p>Application Papers</p> <p>9)<input type="checkbox"/> The specification is objected to by the Examiner.</p> <p>10)<input checked="" type="checkbox"/> The drawing(s) filed on <u>31 July 2003</u> is/are: a)<input type="checkbox"/> accepted or b)<input type="checkbox"/> objected to by the Examiner.</p> <p>Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).</p> <p>Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).</p> <p>11)<input type="checkbox"/> The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.</p>										
<p>Priority under 35 U.S.C. § 119</p> <p>12)<input type="checkbox"/> Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).</p> <p>a)<input type="checkbox"/> All b)<input type="checkbox"/> Some * c)<input type="checkbox"/> None of:</p> <ol style="list-style-type: none"> 1.<input type="checkbox"/> Certified copies of the priority documents have been received. 2.<input type="checkbox"/> Certified copies of the priority documents have been received in Application No. _____. 3.<input type="checkbox"/> Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)). <p>* See the attached detailed Office action for a list of the certified copies not received.</p>										
<p>Attachment(s)</p> <table border="0"> <tr> <td>1)<input checked="" type="checkbox"/> Notice of References Cited (PTO-892)</td> <td>4)<input type="checkbox"/> Interview Summary (PTO-413)</td> </tr> <tr> <td>2)<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</td> <td>Paper No(s)/Mail Date. _____</td> </tr> <tr> <td>3)<input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____</td> <td>5)<input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</td> </tr> <tr> <td></td> <td>6)<input type="checkbox"/> Other: _____</td> </tr> </table>			1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)	2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____	3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)		6) <input type="checkbox"/> Other: _____
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	6) <input type="checkbox"/> Other: _____									

DETAILED ACTION

Double Patenting

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 1-6 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-6 of prior U.S. Patent No. 6,646,509. This is a double patenting rejection.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stacy A Whitmore whose telephone number is (571) 272-1685. The examiner can normally be reached on Monday-Thursday, alternate Friday 6:30am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Niebling can be reached on (571) 272-1679. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Stacy A Whitmore
Primary Examiner
Art Unit 2812

SAW

